IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1471 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01/09/2004 in WP No. 15350 OF 2004 on the file of the High Court.)

Between:
Y.M. Johnson S/o Y.M. Samuel
r/o D. NO. 3-729/1, 5th Road, Krishnapuram Tadpatri, Anantapur District.

..... APPELLANT

AND

1. The Andhra Pradesh State Civil Supplies Corporation Limited, Hyderabad rep. by Vice-Chairman and Managing Director.
2. The District Manager, A.P. State Civil Supplies Corporation Limited, Ananthapur.
3. The Joint Collector, Ananthapur
4. C. Dwarakanatha Reddy S/o Ramakrishna Reddy
r/o Tadpatri, Anantapur District.

.....RESPONDENTS

Counsel for the Appellant: Mr. O.MANOHER REDDY

Counsel for the Respondents 1 & 2: Mr.B.Thimma Reddy
Counsel for Respondent No.3 : G.P. for Civil Supplies
Counsel for Respondent No.4: Mr.N.Sreedhar Reddy for Mr.N.Ranga Reddy.

The Court made the following :

ORAL JUDGMENT:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Appeal is by the writ petitioner. Writ Petition was dismissed. Challenge in the Writ Petition was made to order dated: 18.8.2004 passed by the Joint Collector, Anantapur, by which, Stage-II contract awarded to the petitioner for the period 2004-2006 was terminated with immediate effect.

Tender notice was published on 25.2.2004 for appointment of Stage-II contractor for MLS Point, Tadipatri. As per the terms and conditions of the tender notice, tenderer was required to furnish an affidavit to the effect that he had no past or present criminal record with the Police/Vigilance Cell of Civil Supplies Department. Last date of receipt of tender was 5.3.2004. The petitioner submitted his tender on 5.3.2004 with an affidavit dated 4.3.2004 stating that he had no criminal record, and, no criminal case was filed or pending against him. Tenders were opened on 5.3.2004. Petitioner was called for negotiation on 9.3.2004 and he was declared to be the successful tenderer and was awarded the contract on 14.4.2004. On 29.4.2004, an agreement was entered into and contract was awarded with effect from 1.5.2004 for a period of two years.

On 30.7.2004, show cause notice was issued by the Joint Collector, Anantapur to the petitioner saying that FIR No.44 of 2004 of Tadipatri Town Police Station discloses that the petitioner is involved in criminal case for the offences under Sections 147, 148, 324, 307, 332, 435 read with 149 of the Indian Penal Code and Section 25(1b)(a) of the Arms Act. Petitioner is shown as Accused No.49 in the said

case. It is also stated that the petitioner obtained bail from the High Court on 19.4.2004. Therefore, petitioner was called upon to show cause why the contract be not cancelled. Reply to the show cause notice was submitted by the petitioner in detail stating that he has duly complied with the terms and conditions of the tender notice and stating that he was not involved in the criminal case. Lodging of FIR and impleading him therein as Accused No.49 was politically motivated with ulterior motive of political masters of ruling party. It is also pointed out that as per the terms of the agreement between the parties, once agreement was entered into, contract could have been terminated only on the grounds mentioned in clause 8 thereof that the contractor had failed to observe any of the provisions of the contract or had been adjudged as insolvent or convicted or punished under the provisions of the Essential Commodities Act, or, the Central Order issued under the said Act. On receipt of the explanation, the Joint Collector passed the order impugned in the Writ Petition, relevant portion of which reads:

> " Taking into consideration of the explanation submitted by the contractor, terms and conditions of the Tender Notice and agreement, it is observed that:
>
> 1) It is clear vide Tender Condition No.10 that no person having past or present criminal record is eligible for appointment as a Stage-II contractor. The respondent has taken a purely technical plea that as on the date of filing of the sworn affidavit i.e. 04-03-2004, he was not involved in any criminal case. The Criminal case in FIR 44/2004 has been filed on him on 07.04.2004, which is subsequent to the date of filing of the affidavit. This is a specious plea which if granted shall defeat the very purpose of putting the condition in the tender document.
> 2) Even on the basis of pure chronology of the events i.e. filing of affidavit (04.03.2004), date of appointment (14.04.2004), issue of Work Order (01.05.2004) and the date of crime as mentioned in the FIR (07.04.2004), it is clear that the respondent has involved himself in criminal activity prior to the date of issue of the Appointment order and work order.
> 3) Appointment order and Work order were issued to the respondent because of the fact of his involvement in crime No.44/2004 in FIR dated 07.04.2004 was not brought to the notice of the A.P. State Civil Supplies Corporation Ltd., Anantapur.

> After careful examination of the case it is clear that the respondent i.e. Sri Y.M.Jhonson has involved himself in criminal Activity prior to the date of issue of appointment order i.e. 14.04.2004 and work order i.e. 01.05.2004. The appointment order and work order were issued to the respondent because of the fact of his involvement in crime No. 44/2004 and in F.I.R. dated 07.04.2004 was not brought to the notice of the A.P. State Civil Supplies Corp. Ltd., District Officer, Anantapur. Hence the Stage-II contract which was awarded to Sri Y.M.Jhonson MLS Point Tadipatri for the period 2004-2006 is hereby terminated with immediate effect."

The petitioner challenged the said order in the Writ Petition, and, the learned Single Judge dismissed the Writ Petition holding that in view of condition No. 3(b) of the agreement, respondent had absolute power to terminate the agreement at any time during its currency after issuing show cause notice, and, therefore, there was nothing wrong in the impugned order, and, more over, the petitioner can work out his remedy in accordance with law.

Writ Appeal is preferred questioning the said order. Respondent No.4 is a person who after termination of the contract was asked to provide lorries for delivery of essential commodities to the doorsteps of fair price shop points. He is not a person to whom contract has not been awarded. Therefore, in our view, he has no right in the matter to be heard.

We have heard learned counsel for the appellant and learned counsel for respondents 1 to 3, and, are of the view that the order impugned in the Writ Petition is illegal and arbitrary and is liable to be set aside.

Admittedly, as on the date of filing of tender, petitioner was not having any criminal record. Subsequent to the opening of tender, criminal case was registered against him. Lodging of F.I.R. does not amount to the conviction of any of the accused, or, punishment for the offences alleged in the F.I.R. Admittedly, petitioner has not been convicted or punished under the provisions of the Essential

Commodities Act or under the Central Orders issued under the said Act. Admittedly, petitioner has not contravened any of the provisions of the contract or has not incurred any disability as is enumerated in clause 8 of the contract. The power, which can be exercised by the Corporation of terminating the agreement at any time during its currency, after the contract was awarded, cannot be exercised arbitrarily. Though the power is vested to terminate the contract, but, once the contract-agreement enumerates the grounds on which it can be terminated, existence of such a ground is a pre-condition for termination of the contract. In case, contract is terminated on any of the grounds, which is a ground enumerated in the contract, normally, such an order terminating contract, in exercise of the writ jurisdiction, will not be quashed or set aside, and the person complaining illegal termination of the contract will have to work out his remedies in accordance with law and invoke the arbitration clause. In the instant case, termination is *de hors* the contract, on the ground, which is arbitrary and it renders the decision making process to be bad in law. We would go to the extent of saying that it is a perverse order terminating the contract, since the contract could not have been terminated on the ground of a mere registration of an F.I.R. during the currency of the contract, or, may be, after opening of the tenders. Offence alleged is not under the provisions of the Essential Commodities Act, or, under any of the Central Orders issued under the said Act. In such like cases, Courts are not powerless to exercise extraordinary jurisdiction to set aside such illegal and arbitrary orders. Involvement of petitioner in criminal activity prior to the date of issuance of appointment order and contract is also not a ground on which counter affidavit has been filed. Authorities are supposed to look into the offence alleged in the F.I.R. as to whether or not the said

alleged offence has anything to do with the provisions of the Essential Commodities Act or the Central Orders issued under the Act. Otherwise, every contract awarded would be liable to be terminated on the ground *ipsi dixit*, or, on the basis of any name found in the F.I.R., which might be filed by the unsuccessful tenderer against the successful tenderer and protection is claimed. Such a measure is not envisaged and the same is also not the intention under the contract.

For the reasons aforementioned, orders impugned are liable to be set aside. Writ Appeal is allowed and the impugned order is set aside. Writ Petition is allowed and the order impugned in the Writ Petition is set aside. Resultantly, appellant-petitioner is entitled to execute the contract as per the terms and conditions of the contract.

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DEVINDER GUPTA, C.J.

23.9.2004.

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C.V.RAMULU, J.

VR.

To

1. The Andhra Pradesh State Civil Supplies Corporation Limited, Hyderabad rep. by Vice-Chairman and Managing Director.
2. The District Manager, A.P. State Civil Supplies Corporation Limited, Ananthapur.
3. The Joint Collector, Ananthapur.
4. Two CCs to Government Pleader for Civil Supplies, High Court Buildings, Hyderabad (OUT).

5. Two CD copies.